(1) Supreme Court, U.S.
FILED

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARGARET KEANE,

Petitioner,

v.

JOSEPH P. KEANE,

Respondent,

On Petition
For Writ of Certiorari
To The Kalamazoo County
Michigan Circuit Court

PETITION FOR WRIT OF CERTIORARI

Margaret M. Keane
In Pro Per
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37pp

QUESTIONS PRESENTED

I

DID THE TRIAL COURT VIOLATE MS. KEANE'S CONSTITUTIONAL RIGHT TO DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION WHERE IT DENIED ENFORCEMENT OF THE STIPULATED JUDGMENT OF DIVORCE PROVISION OF HEALTH INSURANCE FOR DEFENDANT/PETITIONER, EFFECTIVELY PROVIDING PLAINTIFF/RESPONDENT RELIEF FROM THE JUDGMENT OF DIVORCE WITHOUT PLEADINGS OR PROOFS PRESENTED TO THE COURT?

II

IS A STIPULATED JUDGMENT OF DIVORCE INTERPRETED IN THE SAME MANNER AS A CONTRACT PROTECTED FROM IMPAIRMENT BY A STATE UNDER ARTICLE I SECTION 10 OF THE UNITED STATES CONSTITUTION?

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceeding below were Margaret M. Keane and Joseph P. Keane.

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The Order of the Supreme Court of Michigan Denying Reconsideration appears in the Appendix at 1a. The Order of the Supreme Court of Michigan Denying Review of the Case appears in the Appendix at 2a. The Order of the Michigan Court of Appeals Denying Leave To Appeal appears in the Appendix at 3a. The Order of the Michigan Court of Appeals Dismissing the Claim of Appeal appears in the Appendix at 4a. The Opinion and Order of the Kalamazoo County Circuit Court Denying Defendant's (Petitioner) Petition for Enforcement of Judgment of Divorce Regarding Medical Insurance Appears in the Index at 5a. The March 24, 1994 Order of the Kalamazoo County Circuit Court RE: Spousal Support and Division of Retirement Funds appears in the Index at 6a. None of the opinions or orders have been reported.

JURISDICTIONAL GROUNDS

The Kalamazoo County, Michigan, Circuit Court's decision in this case is in conflict with the decisions of this Court concerning procedural and substantive due process which are protected by the Fourteenth Amendment and also with decisions of this Court concerning impairing the obligations of contracts which is prohibited under Article I, Sec. 10 of the U. S. Constitution. The Order of the Michigan Supreme Court Denying Reconsideration of its Order to Deny Review in this case was issued on December 28, 1999. Pursuant to 28 USC 1257, this Court has jurisdiction to review the decision of the Kalamazoo County Circuit Court.

CONSTITUTIONAL PROVISIONS, STATUTES AND COURT RULES INVOLVED

1) **U S Constitution, Article I, Sec. 10**

No State shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts....

2) **U S Constitution, Amendment XIV**

No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

3) **Michigan Court Rules**

MCR 2.517 Findings by the Court

A. Requirements

1) In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

2) Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail particularization of facts.

3) The court may state the findings and conclusions on the record or include them in a written opinion.

MCR 2.612 Relief From Judgment or Order

(A) Clerical Mistakes.

(B) Defendant Not Personally Notified.

(C) Grounds for Relief From Judgment.

(1) On Motion and on just terms, the court may relieve a party on the following grounds:

(a) Mistake.
(b) New evidence.
(c) Fraud (intrinsic or extrinsic).
(d) The judgment is void.
(e) The judgment has been satisfied.
(f) Any other reason justifying relief from the judgment.

MCR 2.612.3 Consent Judgments

In Trendell v Solomon, the Court of Appeals ruled that a consent judgment, once entered, has the full force and effect of a litigated judgment. Accordingly, the proper remedy is enforcement when one of the parties does not comply with its terms. As with other judgments, a party may be granted relief from a consent judgment for the reasons enumerated in MCR 2.612.

Rule 7.203 Jurisdiction of The Court of Appeals

(A) Appeal of Right. The court has jurisdiction of an appeal of right filed by an aggrieved party from the following:

(1) A final judgment or final order of the circuit court, except a judgment or order of the circuit court.

(a) on appeal from any other court or tribunal;

(b) in a criminal case in which the conviction is based on a plea of guilty or nolo contendere;

(2) A judgment from which appeal of right to the Court of Appeals has been established by law or court rule;

(3) In a divorce or paternity action, a postjudgment order affecting the custody of a minor.

STATEMENT OF THE CASE

The Judgment of Divorce entered on November 18, 1985, in Case No. 80-100823-DO, Joseph P. Keane v. Margaret M. Keane, incorporated the September 20, 1985 stipulation between the parties in its entirety, including the provision of health insurance to Ms. Keane, which was to be paid in addition to alimony.

During October 1990, Ms. Keane discovered that Mr. Keane had violated the stipulated judgment of Divorce's provision to select her as beneficiary of the 50% Joint and Survivor Annuity Option under his IBM Pension Plan. On December 6, 1990, she petitioned for entry of a Qualified Domestic Relations Order to correct his violation. On March 15, 1991, a stipulated agreement which provided Ms. Keane in her own name 50% of Joseph Keane's November 18, 1985 vested and accrued benefits as a substitute for the Judgment's provisions in reference to the pension was entered into the record. On November 18, 1985, Mr. Keane was retirement-eligible

with an entitlement to an early retirement benefit commencing on the first of the month following his termination under the Plan.

Mr. Keane prepared a Domestic Relations Order ordering the IBM Plan to pay Ms. Keane a benefit actuarially equivalent to the "assigned benefit," which is defined as 50% of Mr. Keane's November 18, 1985 accrued benefit under the Plan. He also prepared an amendment to the Judgment which was not acceptable because it would have vacated the award to Ms. Keane of 50% of the two retirement benefits, additional to the pension (the 401K and the retirement enhancement program). The DRO was submitted to the court on May 28, 1991, but the amendment was not, leaving the 401K and the ITO II (retirement enhancement) benefits to be divided at Mr. Keane's retirement. After the parties stipulated to the fact that the words of the DRO complied with their March 15, 1991 stipulated agreement, the DRO was entered in the file. On April 21, 1992, it was qualified by Mr. Borgeson, IBM's corporate counsel, the Retirement Plan actuary's counsel and the Retirement Plan spokesperson. The agreement basically enforces the stipulated judgment.

Mr. Keane petitioned for retirement and on June 12, 1991, and the Plan determined benefits for commencement on July 31, 1992. The Plan provided Ms. Keane with the November 18, 1985 payable-at-normal-retirement-age payment calculated as an early retirement benefit under the Plan's schedule for early retirement reductions at age 62 (Mr. Keane's age on August 1, 1992), which is no reduction. This benefit is <u>not</u> 50% of Mr. Keane's accrued November 18, 1985 normal retirement benefit including or excluding the early retirement supplemental benefit. It is 50% of Mr. Keane's early

retirement benefit calculated as if he retired on November 18, 1985, and elected to defer calculation and commencement on his benefit to August 1, 1992, at his age of 62.

The Plan then converted this deferred benefit to a benefit payable for Ms. Keane's life span and also applied a factor of reduction for conversion from a straight life benefit to a 50% joint and survivor benefit with Mr. Keane as beneficiary, providing Ms. Keane with a benefit actuarially equivalent to 50% of Mr. Keane's November 18, 1985 early retirement benefit deferred to age 62.

Ms. Keane's then lawyer immediately protested the calculation in a letter dated July 13, 1992. Mr. Keane retired on August 1, 1992, and the Plan commenced the uncontested part of his benefits to him, but because Ms. Keane protested the benefits determination, and for the specific purpose of applying economic duress, withheld all payments to Ms. Keane in violation of its fiduciary obligations to her under ERISA. Ms. Keane's then lawyer spent the next 18 months petitioning the court for payment of her 50% of the $122,000 in the 401K account and the $100,000 ITO II (early retirement enhancement program), having filed a petition to modify the Judgment regarding support and to enforce on July 7, 1992. During that time, Ms. Keane's counsel corresponded with Mr. Borgeson of IBM for commencement of correctly-determined benefits. All of the above requests were denied.

At a hearing on January 13, 1994, the court announced its decision on the January 7, 1992, petition for enforcement of the Judgment of Divorce re: division of the 401K and ITO II, plus temporary alimony due to no income from the Plan. The court's decision was that the

QDRO substituted for all retirement benefits, even though the judgment had not been amended and Ms. Keane was impoverished.

At that hearing, the Plaintiff-Respondent's lawyer (pg. 17 of Transcript), Jack Keiser, asked the court to change the way the defendant is required to pay the health insurance, admitting that this request was not in the pleading. Defendant-Petitioner's lawyer, Jeff Rubel, advised the court that it did not have authority to change the provision, right then. The court's response was, "It was not in the pleading, and if you want to file a petition to address that, that's fine. The OPINION RE: SPOUSAL SUPPORT AND DIVISION OF RETIREMENT FUNDS was entered in the court on March 24, 1994. App 6a.. The health insurance Plaintiff-Respondent was ordered to be continuously responsible for maintaining and paying for in the Judgment of Divorce was not mentioned in the February 24, 1994 Order.

During the hearing there were findings of fact for the temporary alimony, and for the ITO II and the 401K orders, albeit they were contrary to both experts' and Ms. Keane's unrefuted testimony, but there were none for the health insurance payments.

As a direct result of the Plan's economic duress, withholding even the uncontested payments from Ms. Keane, she could not retain an attorney to appeal the above decision which was in direct conflict with the May 28, 1991 decision of the parties to provide Ms. Keane with the full value of Judgment's award and not amend the Judgment. Two expert witnesses had testified that each of the benefits were retirement benefits--the ITO II because that payment was triggered by Mr. Keane's retirement.

Plaintiff never filed a petition to change the health insurance payment as suggested by the court on January 13, 1994. He simply ceased payments in March 1996, after having sent a letter to Defendant-Appellant which erroneously claimed that the court terminated health insurance as well as ended spousal support, in its order of March 24, 1994. App 6a. The ORDER only terminated Plaintiff's entire obligation to pay spousal support which Plaintiff's lawyer defined as alimony on pg. 12 of the October 11, 1996 Hearing.

On July 11, 1996, Defendant filed a Petition For Enforcement of Judgment of Divorce and for order to show cause regarding medical insurance. A hearing was held on October 11, 1996, where the court ordered a review of the file dealing with the whole issue of health insurance (pgs. 25-26). The defendant prepared the memorandum requested by the court and filed it on December 5, 1996. The Plaintiff responded to it on December 27, 1996, stating his claims. The Defendant-Appellant replied to that response on January 9, 1997.

The Opinion and Order Denying Defendant's Petition for Enforcement of Judgment of Divorce Regarding Medical Insurance was entered February 26, 1997. App. 5a.

A claim of appeal, No. 201911, was filed in the Court of Appeals February 14, 1997, on a timely basis and subsequently dismissed by the court on September 16, 1997, for lack of jurisdiction. App 4a. A flurry of correspondence along with research into the history of MCR 7.203 was followed by drafting of the Application for Leave to Appeal, No. 209883, which was filed within the allowed time, on February 26, 1998.

On November 17, 1998, the Application for Leave to Appeal was denied by the Court of Appeals. App. 3a. An application for leave to appeal to the Michigan Supreme Court was filed on December 8, 1998, in Case No. 113651 and denied on September 22, 1999, with one dissent. App 2a. A motion for reconsideration was filed on October 13, 1999, and denied on December 28, 1999. App 1a.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT SHOULD GRANT THE WRIT BECAUSE THE PREJUDICE OF THE TRIAL COURT VIOLATED- MS. KEANE'S PROCEDURAL AND SUBSTANTIVE RIGHTS TO DUE PROCESS PROTECTED UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

A. *Introduction*

The Due Process clause of the Fourteenth Amendment provides distinct guarantees of substantive Due Process and procedural due process; substantive due process includes both the protections of most of the Bill of Rights, as incorporated through the Fourteenth Amendment, and also the more general protection against certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them. Procedural due process guarantees that a state proceeding which results in a deprivation of property is fair, while substantive due process insures that such state action is not arbitrary and capricious. 16B Am Jr 2d Constitutional Law § 901.

B. ***Procedural Due Process***

During the January 13, 1994 hearing, the court itself determined that there was an impediment to its making a decision on the issue of health insurance. Plaintiff Keane did not file a motion or petition under MCR 2.612 for relief from the health insurance provision of the Judgment as required by the court. The impediment to the court's authority to change the health insurance requirements of the judgment was not altered. Still, the court denied enforcement in its Order of February 26, 1997, App 5a, which decision of the court was wholly inconsistent with its decision on January 13, 1994. App 6a. This decision of the court had the same effect as providing unjustifiable relief to Plaintiff Keane without pleadings or proofs before the court and is an infringement on Defendant's constitutional right to Due Process as well as a violation of MCR 2.612.3.

In *Cooper v. Watts,* 191 So. 2d 519,522, the Supreme Court of Alabama stated:

> We have held that the constitutional requirement of Due Process of law means notice, a hearing according to notice, and a judgment entered in accordance with such notice and hearing.

In *American Machine & Foundry Co.* v *Star Lanes Corp.,* 385 Mich 282, 286; 187 NW2d 885,887, the Michigan Supreme Court said:

> . . . where issue whether all or certain of property awarded wife by divorce judgment should be subjected to claims of former husband's judgment creditors was not shown

> to have been tried and determined according to established procedure... The order of the Court of Appeals must be reversed. So must the appealed Circuit Court Order. The Circuit Court file is remanded to circuit for trial of the issue framed by the receiver's motion to subject all or certain of the property awarded Jean Simon by the divorce judgment to the claims of her former husband's judgment creditors, and by Jean Simon's answer to that motion.

In *Keane v Keane*, there was no petition, no proofs, no hearing of the issues at hand where facts were found to enforce the judgment. The court simply substituted its personal prejudice for the judgment of the parties. The U.S. Constitution has been violated and this court should grant certiorari.

C. ***Substantive Due Process***

1. Equal Protection

Certiorari should be granted in this case because Ms. Keane's Fourteenth Amendment rights were violated when the Michigan circuit court did not apply Michigan law and court rules in *Keane v Keane* in the same manner or process as are applied in other cases on point. Mr. Keane was provided relief from the Judgment he was not entitled to at Ms. Keane's expense when the court refused to enforce the judgment.

2. Comparison Of Cases

Opland v Kiesgan
234 Mich App 352

In Opland, 594 NW2d 505 (1999), the court had previously decided that *Opland* was barred from claiming that her daughter Stephanie was Kiesgan's daughter because a Judgment of Divorce had been entered designating her husband Craft as Stephanie's father. Following that decision, *Opland* through Post-Judgment divorce proceedings secured a determination that her child was not an issue of her previous marriage to Craft. With that impediment removed, *Opland* along with her daughter were able to obtain standing under the Paternity Act and file suit in this case. If *Opland* had not removed the impediment that was barring her standing under the Paternity Act, she would not be able to claim child support for her out-of-wedlock child.

Considering the result in *Keane* v *Keane*, a question that arises here is when and for whom is it necessary to remove an impediment to a court action. Is it only members of suspect classes like out-of-wedlock Stephanie Craft and her mother who must remove impediments to a claim, but not white, middle-class men like Plaintiff Keane who was not required to remove the impediment, by filing a petition, in order to succeed in obtaining relief from a consent judgment with Defendant Keane, a member of five suspect classes – disabled, senior, woman, divorced, and in pro per. The court's refusal to enforce the judgment effectively relieves Mr. Keane of his responsibility under the stipulated Judgment without pleadings, proofs or a hearing framed by the issues.

Is our Constitution there just to protect citizens from out-of-wedlock mothers or is it also there to protect the Defendant-Petitioner who only stipulated to her Judgment of Divorce because she was promised it would be enforced? In fact, MCR 2.612.3 requires enforcement in *Keane*.

Kosch v Kosch
233 Mich App 346

In *Kosch*, 592 NW2d 434, 438 (1999), the Michigan court's decision on January 8, 1999, contradicts the decision in *Keane* v *Keane* where it denied hearing on the trial court's denial of enforcement of the stipulated judgment's health insurance provision. In *Keane*, the trial court reviewed the file history of the health insurance benefits awarded even though the plaintiff had not appealed the original decision and had not filed for relief from the judgment under MCR 2.612(C)(1)(f) which allows relief from the judgment for any reason justifying relief not itemized in MCR 2.612(C)(1)(a)-(e).

That begs the question whether there was any reason which could have justified relief from the stipulated judgment for the plaintiff. There wasn't, and that is why Mr. Keane did not file such a petition.

In *Kosch*, where pursuant to the parties' agreement, child support was awarded in an amount lower than the established guidelines, the children lived at a more modest standard than they would have enjoyed without the parties' agreement. In *Kosch*, the defendant petitioned for an increase in child support based on (1) the 54% increase in plaintiff's income and (2) the fact that the children were not living the lifestyle they were entitled to.

The Trial Court's decision was that the children were not entitled to support based on the guidelines for plaintiff's increased income, because the parties' earlier agreement evidenced their intent that the children enjoy a more modest standard of living than provided by the formula. The increase in child support was limited to the

percentage increase in plaintiff's income so as not to conflict with the original intent of the parties. The children continue to live a more modest standard than the guidelines provide.

In *Keane,* the intent of the parties was not considered by the court, and the financially-beleaguered defendant was denied enforcement of the agreement that evidenced the parties' original intent that the plaintiff would provide health insurance to defendant. The trial court substituted its judgment for the judgment of the parties.

In *Keane,* a review of the file shows the financially-beleaguered defendant, who has standing under the Americans with Disabilities Act, has an enormous present and future need for health benefits which is in no small part attributable to her 4 pregnancies during the marriage. It would also show that Mr. Keane had been enriched above and beyond the intent of the parties when they negotiated the divorce settlement.

The file hardly augers for non-enforcement of the judgment which has the same effect as providing relief to plaintiff under MCR 2.612 without a court requested petition or proofs filed in the court.

If a review of the file is allowed as a basis for non-enforcement of a consent judgment, it would be more appropriate to provide relief to the defenseless Kosch children. The Kosch agreement deprives the minor children, who weren't even parties to the agreement, of benefits they would have had absent an agreement. Mr. Keane, who had enjoyed the fruits of the divorce for 14 years, and "cannot be heard to question the jurisdiction of the court which rendered it." *Jackson City Bank & Trust Co.* v *Fredrick,* 271 Mich 538, 546; 260 NW 908, 910 should

not be allowed to benefit from a change in the judgment unless he can provide pleadings and proofs for justification.

The Court of Appeals in affirming the Trial Court's decision in *Kosch* stated:

> Defendant failure to file an appeal from the original judgment of divorce, pursuant to MCR 7.205(A) or (F), precludes a collateral attack on the merits of that decision. By failing to appeal the original judgment of divorce, defendant has effectively stipulated her consent to its provision, including the original determination of child support. *Kosch*, at p. 353.

Mrs. Keane is entitled to the same protection from the Circuit Court, and to the same enforcement of her judgment that was provided to Plaintiff Kosch at the Court of Appeals because Mr. Keane also failed to file an appeal from the original Judgment of Divorce and was precluded from a collateral attack on the merits of that decision as was Defendant Kosch. Under MCR 2.612(3), enforcement is the proper remedy when one of the parties does not comply with the terms of the judgment and has not been awarded relief from the judgment.

This petition should be granted to assure all citizens equal protection in any circuit and at any level of a State's Judiciary.

Mixon v Mixon
237 Mich App 15

In *Mixon*, 602 NW2d 400, heard by the Michigan Court of Appeals on August 13, 1999,, the court states, "Plaintiff first claims that the trial court erred because it failed to properly consider his request for joint physical custody of the parties' minor child and to state on the record its reasons for denying his request. We agree." ..."In the present case, we conclude that the trial court made a clear error on a major issue when it failed to state on the record its reasons for denying plaintiff's request for joint custody."

Obvious from the above is the enormous weight given by the court to the necessity of the trial court's findings of fact. The MCR 2.517(A)(2) requirement that courts make at least brief, definite and pertinent findings on the contested matters in non-jury cases does not limit findings of fact to custody cases. In *Keane*, the trial court, relying on its personal policy of reviewing the file for determining the equity of the original agreement, made no findings of fact. The court didn't even make findings of fact regarding the review of the requested health history file prepared by defendant and contested by plaintiff.

Relying on *Beason* v Beason, 435 Mich 791, 798; 460 NW 2d 207, 210 (1990), Defendant *Keane* has the legal right to the judicial disciplines under MCR 2.517 that afforded Plaintiff Beason enforcement of the original judgment's intent.

In *Keane*, the trial court made a clear error on a major issue when it failed to properly consider defendant's request and state on the record its specific reasons for denying plaintiff enforcement of the stipulated judgment. This decision of the court was a reversal of a judicial standard in place for over a century. *Randall* v *Randall*, 37

Mich 563 (1877); Mich Lexis 322. This standard was recently reinforced with the decision in *Beason* that the trial court must make findings of fact to enforce an original Judgment of Divorce agreement.

Defendant Keane, even though she is a disabled housewife, **in pro per** in a divorce case, has a constitutional legal right to the same proper consideration of her request for enforcement of the judgment and finding of facts for denying her request as Plaintiff *Mixon* received since the Keane court also committed clear error by not properly considering her petition and stating on the record its specific reasons for denying defendant's request for enforcement. In *Mixon*, the Court of Appeals remanded for further proceedings consistent with its opinion. Defendant Keane is entitled to the same decision as Plaintiff Mixon received based on the same circumstances in these cases.

The court should grant certiorari to protect citizens' constitutional rights and remand for a hearing based on pleadings, proofs, and responses to findings of fact to enforce the judgment. Legal standards must be applicable to all citizens at all levels of a State's judicial system.

Schlender v Schlender
235 Mich App 230

In *Schlender v Schlender, 596 NW2d 643 (1999)*, a child custody case, the Michigan courts found the trial court's reliance on an administrative policy was a circuit court's attempt at promulgating a local court rule which is in conflict with and regulates matters covered by the Michigan Court Rules. The court was denying the defendant an evidentiary hearing which he was entitled

to under MCR 3.210(C). The Court of Appeals reversed and remanded.

There are no court rules which have been approved for the Kalamazoo Circuit Court and none in place as a circuit policy that relate to the issues in *Keane* v *Keane*. In *Keane*, Judge Schaefer imposed his own impermissible policy which conflicts with and regulates matters covered by the Michigan Court Rules, by requiring a compilation of anything in the file relating to defendant's health. He then used plaintiff's criticism of this compilation as his findings of fact in violation of MCR 2.517 which requires brief, definite and pertinent findings and conclusions on the contested matters. Judge Schaefer also relied upon his impermissible review to deny the enforcement required under MCR 2.612(3), since plaintiff had not been awarded relief from the judgment under MCR 2.612, and had not even petitioned for such relief Judge Schaefer denied enforcement and the Appeal Courts denied leave.

Defendant Keane has a legal right to the same protection from Judge Schaefer's arbitrary policy conflicting with MCR 2.517(A) and MCR 2.612(3) that was afforded to Defendant Schlender. If a local circuit court rule is invalid when it conflicts or regulates matters covered by the Michigan Court Rules, how can a judge be allowed unauthorized personal policy to review the consent judgment and substitute his judgment for the judgment of the parties even when it conflicts with and regulates Michigan Court Rules?

This Court should grant certiorari as a means to aid, abet and regulate state courts' governance of trial courts' compliance with State Court Rules so that citizens are not subject to arbitrary and capricious treatment from within their local legal system.

II

A STIPULATED JUDGMENT OF DIVORCE IS A CONTRACT THAT SHOULD BE PROTECTED FROM IMPAIRMENT BY A STATE JUDICIARY UNDER ARTICLE I SECTION 10 OF THE UNITED STATES CONSTITUTION?

Black's Law Dictionary defines a contract as:

> An agreement between two or more persons which creates an obligation to do or not to do a particular thing.

Case law in *Lamoureux* v *Burrillville Racing Association*, 91 Rh.I. 94; 161 A2d 213,215 states:

> In 17 C.J.S. Contracts § 1, p. 310, a contract is defined as follows: "A contract is an agreement which creates an obligation. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.

Each of the above descriptions of a contract also describes a stipulated Judgment of Divorce which in theory is enforced as a contract.

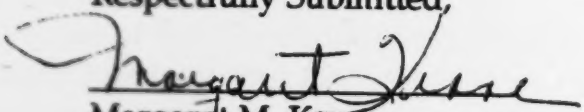
This Court should grant certiorari because the judgment in this case was not enforced in the same manner as a contract and in fact the trial court impaired the judgment contract. Promise her everything, get an agreement, and give her nothing is a common occurrence, in need of this Court's attention.

CONCLUSION

In conclusion, if popular statistics that one in every two marriages end in the divorce courts are anywhere in the vicinity of accurate, there are multitudes of Michigan citizens who have been pauperized or, like Mrs. Keane, have spent years in bondage to the legal system seeking enforcement of their judgment. In Michigan, enforcement of Constitutional rights and Michigan Court Rules are apportioned arbitrarily, and are in need of this Court's attention.

This petition should be granted for determination as to whether consent judgments of divorce are entitled to the same enforcement from a state judiciary that any and every other contract receives.

Respectfully Submitted,



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Dated: May 5-18, 2000

ORDER **Michigan Supreme Court**

Entered: December 28, 1999
113651 (19)

JOSEPH P. KEANE,

Plaintiff-Appellee,

v

SC: 113651
COA: 209883
Kalamazoo CC: 80-100823 DO

MARGARET M. KEANE,

Defendant-Appellant.

On order of the Court, the motion for reconsideration of this Court's order of September 22, 1999 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 28, 1999

/s/
JacquelineB. MacKinnon, Deputy Clerk

ORDER **Michigan Supreme Court**

Entered: September 22, 1999
113651 (19)

JOSEPH P. KEANE,

Plaintiff-Appellee

v

SC: 113651
COA: 209883
Kalamazoo CC: 80-100823-DO

MARGARET M. KEANE,

Defendant-Appellant.

On order of the Court, the application for leave to appeal from the November 17, 1998 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Cavanagh, J., would remand to the Court of Appeals for consideration as on leave granted.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 28, 1999

/s/
Corbin R. Davis, Clerk

COURT OF APPEALS
STATE OF MICHIGAN ORDER

Michael R. Smolenski
Presiding Judge

Joseph P. Keane v Margaret M. Keane

Docket No. 209883 Barbara B. MacKenzie
David H. Sawyer
LC No. 80-100823 DO Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented..

A true copy entered and certified by Carl L. Gromek, Chief Clerk, on

Date: NOV 17, 1998

/s/
Carl L. Gromek, Chief Clerk

IN THE MICHIGAN COURT OF APPEALS

ORDER

Re: Joseph P. Keane v Margaret M. Keane
Docket No. 201911
L.C. No. 80-100823 DO

Maura D. Corrigan, Chief Judge, acting under MCR 7.211(E)(2), orders:

The claim of appeal is DISMISSED for lack of jurisdiction because the February 26, 1997, order denying defendant's petition for enforcement of judgment of divorce regarding medical insurance, is a post-judgment order appealable by leave only. MCR 7.203(A); 7.216(A)(10).

A true copy entered and certified by Ella Williams, Chief Clerk, on

SEP 16 1997

/s/
Ella Williams, Chief Clerk

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JOSEPH P. KEANE

Plaintiff,

v Case No. 801-00-823-DO

MARGARET M. KEANE,

Defendant.
_____/

OPINION AND ORDER DENYING DEFENDANT'S PETITION FOR ENFORCEMENT OF JUDGMENT OF DIVORCE REGARDING MEDICAL INSURANCE

At session of said court held in the City and County of Kalamazoo, State of Michigan, on the 26th day of February, 1997.

This matter is before the court on Defendant's petition for enforcement of judgment of divorce and for order to show cause regarding medical insurance.

This petition is denied for reasons cited in Plaintiff's response brief. Furthermore, Plaintiff may file a motion requesting attorney fees and set same for hearing.

IT IS SO ORDERED.

/s/
PHILIP D. SCHAEFER, Circuit Judge

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KALAMAZOO

JOSEPH P. KEANE

Plaintiff,

Case No. 801-00-823-DO

v

Honorable Philip D. Schaefer

MARGARET M. KEANE,

Defendant.
_____/

W. Jack Keiser (P15800)
Attorney for Plaintiff

Jeffery S. Rubel (P41484)
Kreis, Enderle Callander
& Hudgings, P.C.
Attorney for Defendant
One Moorsbridge
Kalamazoo, Michigan 49002
(616) 324) 3000
_____/

ORDER RE: SPOUSAL SUPPORT AND DIVISION OF RETIREMENT FUNDS

At a session of said Court held in the
City and County of Kalamazoo, Michigan
this 24th day of March, 1994.

PRESENT: HONORABLE PHILIP D. SCHAEFER

Pending before this Court is the Defendant's Petition for Modification of Judgment of Divorce: Support and Petition to Enforce Judgment of Divorce and the Plaintiff's Petition for Award of Attorney Fees, and the Court having made certain findings of fact and conclusions of law on the record on January 13, 1994 and being sufficiently advised in the premises;

IT IS THEREFORE ORDERED that Plaintiff's Personal Retirement Plan (PRP) which is part of the IBM Retirement Plan should have been included in the Qualified Domestic Relations Order (QDRO) entered by this Court on May 28, 1991. Accordingly, the QDRO should be modified to include the PRP and the Defendant shall be awarded fifty (50%) percent of the PRP benefit as of November 18, 1985.

IT IS FURTHER ORDERED that the Individual Transitional Option II plan is not part of Plaintiff's "IBM pension or retirement benefits" and thus is not subject to division by this Court pursuant to the Judgment of Divorce.

IT IS FURTHER ORDERED that the division of Plaintiff's 401k Retirement Plan was fully settled by the Stipulation entered before this Court on March 15, 1991 and thus is no longer subject to division by this Court. The Plaintiff is, accordingly, awarded all sums held in his 401k plan with IBM.

IT IS FURTHER ORDERED that Plaintiff shall pay to the Defendant, for support and maintenance, the sum of $115,40 per week, in advance, through the office of the Kalamazoo County Friend of the Court, commencing January 14, 1994 and continuing each and every week

thereafter until one month following her eligibility for her Social Security Retirement Benefits, which is understood by the Court to be January 1996, or upon the death or remarriage of the Defendant or until further order of this Court having competent jurisdiction. It is the intent of the Court that upon one of the conditions set forth above being met, that spousal support will end and will not be subject to further modification by this Court and that Plaintiff's entire obligation to pay Spousal Support will end.

IT IS FURTHER ORDERED AND ADJUDGED that, in the event the Plaintiff shall become delinquent in the payment of support as herein ordered by four (4) weeks or more, the Court shall, upon notice, immediately enter an Order of Income Withholding to collect spousal support at the rate herein ordered and to collect support arrearages, if any, at any time.

IT IS FURTHER ORDERED AND ADJUDGED that the provisions above constitute an alternate payment arrangement which is, by the entry of this Judgment agreed to by the parties and by this Court with the effect that an Order of Income Withholding shall not take effect immediately as otherwise required by Michigan statute (House Bill 5937 of 1990).

IT IS FURTHER ORDERED AND ADJUDGED that any arrearages in spousal support are preserved and shall be paid by the Plaintiff at the rate of $20.00 per week, in addition to his regular spousal support payments.

IT IS FURTHER ORDERED AND ADJUDGED that Plaintiff shall promptly inform the Friend of the Court in writing of any change of address hereafter. Plaintiff's

present address is 4104 Heights Lane, Kalamazoo, Michigan 49008.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff shall pay to the Friend of the Court the sum of $16.25 forthwith and the sum of $19.50 on each July 2nd and January 2nd hereafter so long as spousal support is due under this Judgment; and the Friend of the Court is hereby authorized and directed to transmit to the County Treasurer of the County, the sums so paid under this provision of this Judgment.

IT IS FURTHER ORDERED that each party shall pay their own attorney fees.

IT IS SO ORDERED.

/s/
Honorable Philip D. Schaefer